2815

ATTORNEY DOCKET NO.
XDEV1100

09/682,151

#6
4/23/02
VS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kordesch et al.
Application No.:	09/682,151
Group Art No.	2815
Filing Date:	July 27, 2001
Title:	**CONTACT METHOD FOR THIN SILICON CARBIDE EPITAXIAL LAYER AND SEMICONDUCTOR DEVICES FORMED BY THOSE METHODS**

Commissioner for Patents
Washington, D.C. 20231

CERTIFICATION UNDER 37 C.F.R. § 1.8

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service as First Class Mail to Addressee in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on April 3, 2002.

Carolyn J. Williams

REPLY TO OFFICE ACTION

Dear Sir:

In response to the Office Action mailed March 12, 2002, Applicants respectfully traverse the restriction requirement for the reasons set forth below but elects to prosecute claims 9-15 of Group II if the restriction requirement is not withdrawn. Note that Applicants do not make any admission that the groups of claims as defined in the Office Action are independent of each other, not independent of each other, distinct from each other, or not distinct from each other.

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. (M.P.E.P. § 803). Proper examination of the method claims will involve searching for methods that form devices. In other

words, a proper search of the method claims will yield references with devices formed by those methods. Due to the co-extensive searching, searching and examination of the entire application must be made in accordance with the M.P.E.P. Therefore, Applicants respectfully request withdrawal of the restriction requirement for not meeting the search burden requirement set forth in the M.P.E.P.

The Office Action uses an "independent OR distinct" standard when the language in 35 U.S.C. § 121 clearly requires "independent AND distinct" (emphasis added). When statutory interpretation is at issue, the plain and unambiguous meaning of a statute prevails in the absence of clearly expressed legislative intent to the contrary. *In re Donaldson*, 29 U.S.P.Q.2d 1845, 1848. The Office Action fails to point out any language within the legislative history of the statute to support "AND" (conjunctive connector) as meaning "OR" (disjunctive connector). The fact that the PTO may have failed to adhere to a statutory mandate over an extended period of time does not justify its continuing to do so. *Id.* at 1849. The Office Action fails to point to any binding and compelling statutory, federal rule or judicial authority to support a position that "AND" in the statute means "OR." The Office Action does not address independence between the groups of claims at all. Therefore, the fact that the Office Action does not address independence between the groups likewise causes the restriction requirement to be improper. Therefore, Applicants respectfully request withdrawal of the restriction requirement for not meeting the statutory requirements of 35 U.S.C. § 121.

Applicants note that claims 1 is linked to claim 9. Upon the allowance of any independent claim within the elected set, the restriction requirement as to the linked inventions is to be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claims will be entitled to examination in the instant application. If a linking claim is allowed, the examiner must examine the claims to the nonelected inventions that are linked to the elected invention by such allowed linking claim. M.P.E.P. § 809.04

Applicants appreciate the time and effort expended by the Examiner to review this case. Applicants respectfully request reconsideration and favorable action in this case. Applicants have now made an earnest attempt to place this case in

condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

Applicants believe that no fees are due with this reply. If any fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-0456 of Gray Cary Ware & Freidenrich, LLP.

Respectfully submitted,

Gray Cary Ware & Freidenrich LLP
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Dated: 4/2/2002

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